GRANTED

No. 02-306

IN THE

Supreme Court of the United States

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BENEFICIAL NATIONAL BANK AND
BENEFICIAL TAX MASTERS, INC.,
Petitioners,

v.

MARIE ANDERSON, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

In addition to the Rule 29.6 statement in their opening brief on the merits, petitioners state as follows:

On March 28, 2003, Household International, Inc., was merged into H2 Acquisition Corporation, a wholly-owned subsidiary of HSBC Holdings plc, which was then renamed as Household International, Inc. As a result of the foregoing transactions, Household International, Inc., is now a wholly-owned subsidiary of HSBC Holdings plc, which is publicly traded. Household International, Inc., is in turn the parent corporation of Household Finance Corporation and Household Tax Masters, Inc., each of which has retained its separate corporate existence.

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REPLY BRIEF FOR PETITIONERS

Respondents allege that a national bank charged them excessive interest. In a long line of decisions, this Court has consistently read Section 30 of the National Bank Act of 1864, 12 U.S.C. §§ 85-86, as providing that (a) this federal law, and only this federal law, regulates the permissible rate of interest that a national bank may charge, and (b) the only remedy against a national bank for charging excessive interest is also set forth in this federal law. *See* Pet. Br. 11-14. It follows, therefore, that no state-law usury claim is available against a national bank, and that respondents' usury claim necessarily arises under federal law. Because respondents' usury claim in their complaint arises under federal law, that claim may be removed to federal court under 28 U.S.C.

§ 1441, along with any other supplemental state-law claims that they may have raised in their complaint.

The resolution of this case is therefore quite straightforward. Nonetheless, respondents make a variety of arguments in an effort to persuade this Court that they have a state-law usury claim that should remain before the state courts. First, they argue (Resp. Br. 5-9) that, under the well-pleaded complaint rule, federal "arising under" jurisdiction under 28 U.S.C. § 1331 turns entirely on whether the plaintiff states a federal claim "on the face of the complaint," and so, because they have not *expressly* invoked federal law in their complaint, this case cannot be said to arise under federal law. Second, they argue (Resp. Br. 17-22) that state law in fact governs the interest rate that a national bank may charge. Third, they contend (Resp. Br. 9-17) that Section 30 of the National Bank Act at most provides a federal defense of preemption to a national bank that is faced with a state-law usury claim, and does not provide that federal law is the only source of a possible usury claim against a national bank. Finally, they argue that Congress has not indicated with sufficient clarity that usury claims are to be treated as federal in nature or are to be subject to removal (Resp. Br. 22-32). All of these arguments are without merit.

A. Respondents Cannot Avoid Removal By Mischaracterizing A Federal Claim As A State Claim

Respondents' principal contention is that they refrained from pleading a federal cause of action in their complaint, and so there is no well-pleaded controversy arising under federal law in this case. The well-pleaded complaint rule that respondents invoke, however, has never been understood to allow a party to avoid federal jurisdiction by mischaracterizing (or failing accurately to characterize) the source of law underlying a cause of action. It is true that a plaintiff cannot establish original federal jurisdiction by pleading an anticipated federal defense to its state-law claim. *See Skelly Oil*

Co. v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950). It is similarly true that a defendant cannot establish federal removal jurisdiction by pleading a federal defense to a real and substantial state-law claim raised in the complaint. *See Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 10-11 (1983). But this Court has never suggested that a plaintiff can avoid federal removal jurisdiction simply by mischaracterizing a claim as arising under state law, when that claim actually arises under federal law.

Indeed, mischaracterizing a federal claim as a state claim is exactly the kind of "artful pleading" that this Court has long condemned, and has held must be disregarded for purposes of ascertaining whether a federal court has jurisdiction over a case. Thus, it is a corollary to the well-pleaded complaint rule that the court itself should determine the true character of the claim. *See* Pet. Br. 16-19. As this Court recently reiterated in *Rivet* v. *Regions Bank of Louisiana*, 522 U.S. 470 (1998), "a plaintiff may not defeat removal by omitting to plead necessary federal questions," and "[i]f a court concludes that a plaintiff has 'artfully pleaded' claims in this fashion, [the court] may uphold removal even though no federal question appears on the face of the complaint." *Id.* at 475-476 (internal quotation marks omitted). Similarly, in *Franchise Tax Board*, the Court made clear that, although it is often said that "the party who brings the suit is master to decide what law he will rely upon," that aphorism is qualified by the "independent corollary of the well-pleaded complaint rule that a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint." 463 U.S. at 22 (internal quotation marks omitted).

In this case, respondents have attempted to avoid removal by refusing to plead a "necessary federal question" in their usury claim against petitioners—namely, whether the interest charged by petitioners exceeded the permissible rates allowed by federal law. But notwithstanding that refusal, it is clear from the complaint that respondents' usury claim necessarily arises under federal law. Respondents have sued

a national bank, and have alleged in a count of their complaint that the national bank charged them excessive interest. See J.A. 28-29. Nothing more is needed to establish that respondents' usury claim arises under federal law.[1]

B. Federal Law Exclusively Governs The Interest That May Be Charged By National Banks

Respondents argue (Resp. Br. 17) that the National Bank Act "vests the *states* with the authority to legislate and establish interest rate limitations" on national banks. This assertion reflects a serious misapprehension about Section 30 of the National Bank Act. Section 30 does not give the states

[1] In an apparent effort to deflect attention from the fact that their usury claim necessarily arises under federal law, respondents note that they have also alleged that petitioners engaged in "misrepresentations and suppressions" of the actual interest rate charged for the loans at issue (*see* Resp. Br. 7-8). But whether respondents' complaint *also* asserts a state-law claim for fraud is irrelevant to the question before the Court. We have not contended that respondents' claims based on alleged "misrepresentations" or "suppressions" of the actual interest rate arise under federal law. Respondents could have chosen to stand on a state-law fraud claim alone, undertaking to shoulder the difficulties of pleading and proof inherent in any fraud case. Instead, they elected also to plead a claim for usury. Having done so, however, they cannot avoid the implications of that choice, which is that they have asserted a claim that arises under federal law and is removable to federal court.

Respondents argue (Resp. Br. 28) that, if the federal district court were to dismiss their state-law usury claim on "complete preemption" grounds, only state-law claims would remain in their complaint, which the district court would then have discretion to remand to state court. In reality, the district court would presumably treat the usury claim as a federal claim and resolve it on its merits. If the district court dismissed the federal usury claim on the merits, then the district court would have discretion under 28 U.S.C. § 1367 to retain supplemental jurisdiction over the state-law claims in the complaint, as those claims also arise out of the set of facts involved in the federal claim. But even if, after it dismissed the federal usury claim on the merits, the district court remanded the case, respondents' state-court lawsuit would then be shorn of any usury claim, and they would be left to pursue only fraud-type claims against petitioners.

any power to set interest rates that may be charged by national banks. Rather, Section 30 provides authority to national banks, as a matter of federal law, to charge certain interest rates. In some circumstances, the federal standard setting the interest rate that a national bank may charge may be informed by reference to state law, because the federal statute provides that, at a minimum, a national bank is federally authorized to charge whatever rates states allow for competitive lenders that a state may regulate. Nevertheless, the National Bank Act establishes that "[t]he interest rate that [a national bank] may charge" is "governed by federal law." *Marquette Nat'l Bank* v. *First Omaha Serv. Corp.*, 439 U.S. 299, 308 (1978).

Section 85 of Title 12, which is derived from Section 30 of the National Bank Act of 1864, provides:

> Any association may . . . charge . . . interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State . . . .

Under this provision, a national bank is federally authorized to charge interest up to any of the highest of three possible rates. First, a national bank may charge interest at the highest rate allowed by the laws of the state in which the bank is "located." Second, a national bank "organized or existing" in a state may charge interest at the rate that state allows for state-chartered banks. Third, a national bank may charge interest at one percent above the 90-day federal discount rate. *See Marquette*, 439 U.S. at 301 n.1, 308;

Tiffany v. *National Bank of Mo.*, 85 U.S. (18 Wall.) 409, 411 (1873).

Section 30 of the National Bank Act thus grants an explicitly federal authorization to charge interest, creates a distinct federal regime to decide what interest is allowable, and establishes an exclusively federal remedy (set forth in 12 U.S.C. § 86) if an unlawful amount is charged. To be sure, the standards for allowable interest refer in part to state laws—as noted, by allowing, as a federal *minimum* for national banks, certain rates that state laws allow for lenders that the states have the power to regulate. But that is far from establishing that the National Bank Act "vest[s] the states" with the authority to regulate interest charged by national banks, as respondents contend.

To the contrary, Section 30 of the National Bank Act merely refers to state laws that are applicable to state-regulated lenders as a "floor" among the alternatives that are authorized for national banks, to provide as a distinctly federal prescription that national banks may charge at least as much as the states allow their most favored lenders. Moreover, the Act broadens the interest-charging authority of national banks in a distinctly federal way, beyond what state law could do for any lender: it authorizes a national bank based in one state to charge the highest rates allowed by that state for its most favored lender, even when the national bank is lending to borrowers in another state. *See Marquette*, 439 U.S. at 318. Thus, whether or not, as respondents contend (Resp. Br. 19-20), Alabama usury law would apply to a loan made to an Alabama consumer by an Alabama-chartered state bank, it is definitely *not* the case that Alabama usury law would apply to a loan made to Alabama residents (such as respondents) by an out-of-state national bank (such as petitioner).

Given the background against which the National Bank Act of 1864 was enacted, it is hardly surprising that Congress rejected the course of delegating to the states the authority to

regulate interest charged by national banks. The National Bank Act was born of federal wariness of state regulation of national banks, not federal deference to such regulation. *See* U.S. Br. 24-25. As this Court explained in *Tiffany*, because the states had a vested interest in protecting their own state-chartered banks from the competition presented by the new national banks, Congress reasonably feared the prospect of "unfriendly state legislation" regarding national banks, and therefore determined to provide those national banks with "advantages," particularly advantages in charging interest. 85 U.S. (18 Wall.) at 412-413. That is why Congress allowed national banks to benefit from the most favorable of a variety of interest-rate options, including the most favorable interest rate permitted by the state in which the bank is "located," even if a state-chartered bank could not obtain the same benefit. By force of federal law, Congress designated national banks as "[n]ational favorites." *Id.* at 413.

C. Respondents' Usury Claim Arises Exclusively Under Federal Law

1. Respondents contend that Section 30 of the National Bank Act does not establish that usury claims against national banks can arise only under federal law, but instead merely provides petitioners with a federal *defense* against a state usury claim.[2] Resp. Br. 12-15. That argument is simply

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[2] Respondents appear at several points to acknowledge that their state-law usury claim against petitioners is subject to dismissal on the ground of preemption under Section 30 of the National Bank Act (*see* Resp. Br. 11-12 n.2; *see also id.* at 13 n.3, 28 n.8.), and they studiously avoid explaining how that usury claim could possibly survive such preemption. We assume that respondents did not allege a usury claim in their complaint on the expectation that this claim would be promptly dismissed. Nonetheless, we can conceive of no way in which respondents could plausibly argue that Alabama law could survive preemption and be applied to this case. If respondents have some basis for making such an argument, it has never yet surfaced in this litigation. Nor have respondents explained why they prefer to plead a nonexistent state-law claim in preference to a claim under the National Bank Act. *See also* American

contrary to a long line of this Court's cases making clear that the exclusive *basis* for any usury claim against a national bank is federal law. *See* Pet. Br. 13-14 n.12 (collecting cases); *see also* U.S. Br. 22-26. Indeed, the Court's decisions on this point could scarcely be more definitive. The Court has consistently held that "federal law . . . completely defines what constitutes the taking of usury by a national bank." *Evans* v. *National Bank of Savannah*, 251 U.S. 108, 114 (1919).

Contrary to respondents' argument, *Gully* v. *First National Bank in Meridian*, 299 U.S. 109 (1936), does not hold that Section 30 of the National Bank Act is properly understood as establishing only a preemption defense to a state-law usury claim. *Gully* did not involve Section 30 or a usury claim at all. In *Gully*, a state tax collector brought suit against a national bank in state court to recover state taxes that were due from the bank's predecessor. The state authorities alleged that the bank had assumed by contract the predecessor bank's obligation to pay those state taxes. The national bank removed the case to federal court, contending that the case arose under federal law because the National Bank Act authorized the states to tax the shares of national banks. This Court held that removal was improper because, even if federal law had authorized the states to exercise their taxing power in that manner, the actual tax at issue—as well as the supposed contractual obligation of the predecessor to pay that tax—was an exercise of state law. As the Court explained, "[t]hat there is a federal law permitting such taxation does not change the basis of the suit, which is still the statute of the state." 299 U.S. at 115.

Here, the "basis of the suit" against petitioner is necessarily federal rather than state law. Unlike *Gully*, this is not a case in which the federal government authorized the states to

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Bankers Ass'n Amicus Br. 23-29 (noting pattern of nonexistent state-law usury claims brought in state courts against national banks, and explaining adverse effects on national banks caused by such litigation).

regulate national banks, and a state then exercised that authority by applying its own law to a national bank. As we have explained (see pp. 4-7, *supra*), the National Bank Act does not vest states with authority to regulate the interest rates charged by national banks. Rather, in the National Bank Act, Congress permitted national banks, as a matter of federal law, to charge interest at the most advantageous of three rates, including the most favorable rate available to state-regulated lenders. Thus, in any case in which a plaintiff sues a national bank claiming usury, the plaintiff necessarily "counts upon the statute" (the National Bank Act) in making such a claim. *Gully*, 299 U.S. at 112.

2. When Congress enacted Section 30 of the National Bank Act, it entirely supplanted the application of any state usury laws against national banks—just as, when Congress enacted Section 301 of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. § 185, it supplanted state-law contract law insofar as it would otherwise have been applicable to collective bargaining agreements, *see Avco Corp.* v. *Aero Lodge No. 735, Int'l Ass'n of Machinists*, 390 U.S. 557 (1968), and just as, when it enacted Section 502(f) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(f), it displaced any state-law contract or trust law insofar as it would otherwise have been applicable to employee benefit plans, *see Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987). Any usury suit against a national bank is "purely a creature of federal law" (*Franchise Tax Board*, 463 U.S. at 23), even if state law might have provided a cause of action for usury in the absence of the National Bank Act.

Respondents err in arguing (Resp. Br. 30-32, 36) that this case is distinguishable from the LMRA and ERISA situations on the ground that state law provides no "independent source of private rights" to plaintiffs suing under the LMRA or ERISA. The displacement of state law by federal law is at least as clear under Section 30 of the National Bank Act as it is under the LMRA and ERISA (especially in light

of this Court's long line of decisions holding that usury claims against national banks are exclusively federal in nature). In each case, any claim within the scope of the federal cause of action arises only under federal law and is resolved by the application of federal law.

There is no independent state-law source of rights to plaintiffs proceeding under the LMRA and ERISA because Congress has supplanted such state law—and that is just as firmly the case with usury claims against national banks as well. The LMRA and ERISA ousted state-law causes of action under the common law of contracts and trusts, insofar as they might have been otherwise applicable (and indeed *had been* applicable, before those federal statutes were enacted) to suits to enforce collective bargaining agreements and to obtain benefits due under the terms of an employee benefit plan. So too here, Congress has ousted the state law of usury from application to national banks.

3. In a related argument, respondents attempt to distinguish the LMRA and ERISA situations by stressing that the LMRA and ERISA effectuated comprehensive federal field-preemption of the pertinent subject matters. They contend that the National Bank Act does not preclude the application of state laws to national banks in a similarly broad fashion. *See* Resp. Br. 32-35; *see also* States Amici Br. 15-20; Consumer Attorneys Amicus Br. 11-17.

This argument is wide of the mark, for the *breadth* of the federal preemption of a subject matter is not the key to determining whether federal law provides the exclusive basis for asserting a particular claim. "Field preemption" is a phrase sometimes used in preemption analysis to describe a conclusion that Congress has precluded any state regulation of a subject matter; within the "field," state laws cannot operate at all, whether or not they actually conflict with federal law. *See Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 310 (1988). That "field preemption" analysis is not the same as the question whether Congress has intended that any cause

of action that might arise on particular kinds of facts be exclusively federal in nature. One analysis has to do with the permissibility of any state regulation at all in a particular subject matter; the other has to do with the permissibility of state causes of action cognizable in court.

If, nevertheless, a field-preemption approach is employed, then it is clear that Congress has occupied the field relevant here—namely, the field of interest that may be charged by national banks. Congress did so in Section 30 of the National Bank Act by setting a federal standard for permissible interest charges by national banks, establishing a substantial remedy for borrowers when the national bank has violated that standard, and precluding the operation of state laws of their own force in this area. It is simply beside the point that there may be other activities of national banks on which, to some limited extent, state law may have an impact, for Congress has provided that *usury* by national banks is exclusively a matter of federal law. As Congress has completely ousted state law from that field, respondents can proceed on a usury claim only under federal law.[3]

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[3] In any event, respondents (and the amici states) substantially exaggerate the extent to which state laws are applicable to national banks. As both observe, this Court has concluded that, in some circumstances, the application of some state law to national banks is consistent with the National Bank Act. *See Barnett Bank* v. *Nelson*, 517 U.S. 25, 33-34 (1996). Nonetheless, the Court has also made clear that the activities of national banks enjoy substantial protection from state law. *See ibid.*; *Farmers' & Mechanics' Nat'l Bank* v. *Dearing*, 91 U.S. 29, 33 (1875). The traditional presumption against preemption of state law does not apply to the regulation of national banks, for the national banking system has been an "area where there has been a history of significant federal presence" (*United States* v. *Locke*, 529 U.S. 89, 108 (2000)) since that banking system was first established. *See Barnett Bank*, 517 U.S. at 32, 34 (observing that federal statutory grants of enumerated and implied powers to national banks are traditionally interpreted "as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law," and that "where Congress has not expressly conditioned the

D. Congress Has Made Sufficiently Clear That Usury Claims Against National Banks Are Exclusively Federal In Nature, And May Therefore Be Removed

1. Attempting to draw support from this Court's decision in *Metropolitan Life*, respondents argue (Resp. Br. 22) that "express statutory language" is necessary for a conclusion that Congress intended to "displace entirely any state cause of action." It is worth noting at this point that respondents make little effort to defend the central basis of the court of appeals' ruling, which required evidence of a specific congressional intent *to allow removal* of a particular claim before that claim could be said to be "completely preempted" (and therefore removable). *See* Pet. App. 13a-16a. As we have explained in our opening brief (Pet. Br. 30-32), any search for a specific congressional intent *to allow removal* of a particular claim is entirely misguided, because Congress has made removal available across-the-board to defendants faced with federal causes of action in state courts. The pertinent question, rather, is whether Congress has provided that a particular cause of action must be federal in nature (regardless of the label placed on it by the plaintiff). *See also* U.S. Br. 26-27; States Amici Br. 2 (both agreeing that evidence of specific congressional intent to allow removal of a claim is not required).

Rather, respondents appear to make a different claim, namely, that what is required is a statutory command that a federal cause of action would exclusively apply in a particular situation. But if that is respondents' formulation, then the National Bank Act surely fits the bill, for indeed there is statutory language supplanting the application of state usury laws to loans made by national banks—namely, Section 30 itself. While Section 30 may not recite *in haec verba* that

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grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies").

"no state usury law shall apply to a national bank," this Court has consistently read Section 30 to have precisely that effect, and it has also consistently held that the only remedy for the charging of excessive interest by a national bank is that provided under Section 30 itself. *See* Pet. Br. 13-14 n.12 (collecting cases).

Further, any rule that Congress must use specified words to verbalize that "no state law shall apply" in order to make a federal cause of action exclusive could not be reconciled with *Avco*, the leading case in which this Court ruled that Congress had completely replaced state claims with a federal cause of action. There is no such language in LMRA § 301(a), the law under consideration in *Avco*. All that Section 301(a) provides is that

> [s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). Despite the absence of any language in that provision referring in any way to state law, this Court has held not only that federal substantive law is to be applied in suits brought under this section, but that federal substantive law is to be *exclusively* applied.

2. Respondents further argue that the background of the National Bank Act does not demonstrate that Congress was concerned about the hostility of state *courts* to national banks, and so there is no basis to conclude that Congress specifically intended to treat all usury claims against national banks as arising under federal law. Respondents point out (Resp. Br. 15, 25-26) that, when the National Bank Act was enacted in 1864, Congress expressly allowed suits under the Act to go forward in both state and federal courts, and that

Congress has never provided for exclusive federal jurisdiction over usury suits against national banks. Respondents attempt to contrast that situation with ERISA and the LMRA, in which (they maintain) Congress did not demonstrate an affirmative acceptance of state-court jurisdiction.

This submission fails for several reasons. First, respondents' argument based on affirmative congressional acceptance of state-court jurisdiction does not distinguish usury suits against national banks from actions for benefits due under an ERISA plan, which this Court has concluded are exclusively federal in nature. *See Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987). Although ERISA establishes exclusive federal jurisdiction for some kinds of actions, it expressly preserves concurrent state-court jurisdiction over actions for benefits due under the terms of a plan. *See* 29 U.S.C. § 1132(e)(1). Second, given the strong presumption in favor of concurrent state- and federal-court jurisdiction over federal causes of action, *see Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), it proves little to show that, in the National Bank Act, Congress expressly endorsed the prevailing arrangement under which state courts may adjudicate federal causes of action.

More fundamentally, respondents' argument rests on the fallacious assumption that removal turns on a showing of congressional concern about state-court hostility to a particular federal right. It does not. Removal is an option that Congress has made available generally to defendants faced with federal claims. The removal statute, 28 U.S.C. § 1441, requires no showing of state-court hostility or local prejudice; it requires only that that the claim would lie within the district court's original jurisdiction, including of course the court's § 1331 jurisdiction over cases arising under federal law. There are a myriad of causes of action that Congress has fashioned under federal law; the vast majority of them may be brought as an original matter in either state or federal court; and yet Congress has provided that virtually all of them may be removed to federal court at the option of the

defendant (with only a few well-known exceptions, *see* 28 U.S.C. § 1445). Specifics of state-court hostility play no role in this analysis.

E. Removal Jurisdiction Does Not Turn On Congress's Intent To "Convert" A Particular State Claim Into A Federal Claim

1. The amici states argue that "complete preemption" of a state cause of action is properly found only when Congress specifically manifests an intent to "convert" a preexisting state-law cause of action into a federal cause of action, and not when Congress creates an exclusive federal cause of action. *See* States Amici Br. 11-15. It is far from clear what the amici states mean by "converting" a claim from state to federal. Nor is it evident why the touchstone of removability should be Congress's intent to effectuate such a "conversion," rather than—as the United States argues more straightforwardly—Congress's intent to fashion an exclusively federal cause of action and thereby to supplant any state-law causes of action that might otherwise have been available (*see* U.S. Br. 10).

If by "conversion," the states mean that a cause of action cannot be removed to district court unless Congress specifically intended that the state law purportedly underlying that claim should be "recharacterized" as federal law, then the states' argument suffers from the same defect as that of the court of appeals' decision.[4] The district courts' original ju-

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[4] Although the amici states claim to abjure the court of appeals' requirement of a specific congressional intent to allow removal of a particular claim (*see* States Amici Br. 2, 8), they nonetheless place considerable reliance on the fact that the general removal statute did not exist when Congress enacted the National Bank Act, and that Congress has not specifically manifested an intent that usury claims against national banks be removable since it enacted the removal statute in 1875 (*see id.* at 18-19). But as we have explained, the proper issue is not whether Congress specifically intended that usury claims against national banks be removable.

risdiction (under § 1331) and removal jurisdiction (under § 1441) turn, equally and across-the-board, on whether a cause of action in the complaint actually arises under federal law. Any case arising under federal law (subject to certain express exceptions) may be removed, just as any case arising under federal law may be brought within a district court's original jurisdiction. It is equally irrelevant in both the removal and the original-jurisdiction contexts *how* Congress arrived at the conclusion that a particular cause of action should be considered federal in nature.[5]

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but whether it intended that they be exclusively federal in nature. If such claims are federal, then they are necessarily removable.

Like the court of appeals, the states seem to suggest that a federal statute enacted before 1875 could never support "complete preemption," even though a claim stated under such an early federal statute would obviously arise under federal law. But that approach would lead to the indefensible result that a claim falling within the district court's original "arising under" jurisdiction under § 1331 if brought there as an initial matter could not be removable under § 1441 if it were initially brought in state court. *See Franchise Tax Board*, 463 U.S. at 8 ("[T]he propriety of removal turns on whether the case falls within the original 'federal question' jurisdiction of the United States district courts[.]").

For example, if respondents had initially brought their usury claim in federal district court but had expressly relied only on Alabama state law for their asserted right to recover, the district court plainly would have had authority to examine the true nature of the case and to determine that the claim was in fact federal. *See generally* 5 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*, §§ 1206, 1209 (2d ed. 1990). In such a case, the jurisdiction of the federal court would not turn on whether Congress had "converted" the purportedly state claim into a federal claim, but simply on whether the claim was federal in nature. There is no basis for the states' suggestion that the district court cannot or should not take exactly the same approach when a purportedly state claim is removed to federal court on the ground that it is, in fact, a federal claim.

[5] The amici states point to the Price-Anderson Act as an example of a situation where Congress has expressly "converted" state-law causes of action into federal claims. *See* States Amici Br. 9; *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473, 484 (1999). The Price-Anderson Act, however, differs from other "complete preemption" situations (such as ERISA and the LMRA) in a fundamental way. In the ERISA and LMRA situations, federal law provides the applicable substantive law, although the courts may draw the content of that federal law from general state-law principles, to the extent that it is appropriate to do so. *See* pp. 17-18, *infra*. In the Price-Anderson Act, Congress created the unusual situation in which federal law establishes the cause of action, but the governing substantive law is provided by the law of the state where the underlying incident occurred. *See* 42 U.S.C. § 2014(hh). In that situation, it may be technically accurate to describe Congress as having "converted" state law into federal law. Moreover, given that federal law is presumptively uniform across the nation, it was likely necessary for Congress to state explicitly in the Price-Anderson Act that principles of a *particular* state law (the law of state where the underlying event occurred), rather than general principles drawn from state law, should be applied in any Price-Anderson Act suit. The Court has never suggested, however, that "complete preemption" will be found only in such an unusual situation, and neither *Avco* nor *Metropolitan Life* involved such a case.

There is no logical reason why the removability of an exclusive federal cause of action should turn on whether it was "converted" from a state cause of action, as the states appear to suggest, rather than on whether Congress displaced all state causes of action that might have otherwise been applicable (as we maintain, and as the United States agrees). Certainly nothing in the removal statute suggests why the plaintiff should be able to defeat removal in one situation but not the other. In each case, the plaintiff has asserted a claim for relief that could have a basis only under federal law, even though the plaintiff has purported to rely on a nonexistent state-law theory.

Nor is there any federalism interest to be served by requiring a showing that Congress "converted" a claim from state to federal. In the context of the National Bank Act, as in the LMRA and ERISA situations, it is Congress's creation of an exclusive federal cause of action and its displacement of all state causes of action that constitute the intrusion on state sovereignty. Once that (permissible) intrusion has occurred, however, there is no legitimate federalism interest to

be served by permitting plaintiffs to avoid the jurisdiction of the federal courts merely by claiming to pursue state causes of action that are in fact nonexistent.

2. Although this Court has occasionally referred in passing to "complete preemption" as "convert[ing] an ordinary state common law complaint into one stating a federal claim" (*Metropolitan Life*, 481 U.S. at 65), or "transform[ing] the plaintiff's state-law claims into federal claims" (*Rivet*, 522 U.S. at 476), the Court was not using the terms "convert" and "transform" in a technical sense. Indeed, the Court has used those terms interchangeably with "displaced" and "replaced." *See Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 394 (1987); *Metropolitan Life*, 481 U.S. at 60, 64, 66; *Franchise Tax Board*, 463 U.S. at 23-24, 26.

Rather, in using those terms, the Court was explaining that, although a court adjudicating an exclusively federal claim might well look to state law for guiding principles, such state law would not apply of its own force, but would be incorporated, where appropriate, into federal law. *See Avco*, 390 U.S. at 559-560 (explaining that Congress did not intend to prohibit courts adjudicating LMRA § 301 cases from looking to state contract law rules, where appropriate, but that such state law would be "absorbed as federal law" rather than apply of its own force). Thus any claim seeking to enforce a collective bargaining agreement or seeking benefits due under a benefit plan must be considered in a sense as having been "converted" into a federal claim in order to go forward, for otherwise no claim could be stated at all; the state law that the plaintiff might otherwise have invoked has been entirely supplanted.

The Court has *not* suggested, however, that courts hearing such "completely preempted" claims should simply transmute any state-law principles that might otherwise have been applicable into federal law. The federal principles governing such cases are not vessels for the passive reception of "converted" state-law rules, as the states seem to suggest.

Rather, they are federal principles drawn, as the courts find it appropriate, from useful and commendable state-law rules, and possibly from other sources as well (such as the policies of the statutes and rules under analogous federal laws). *See Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 110 (1989) (stressing that the "courts are to develop a federal common law of rights and obligations under ERISA-regulated plans") (internal quotation marks omitted); *Franchise Tax Board*, 463 U.S. at 24 n.26 (noting that Congress intended that "a body of Federal substantive law [would] be developed by the courts" under ERISA).

So too, any state-law usury claim brought against a national bank must be thought of as having been "converted" into a federal claim if it is to go forward at all. Even if a plaintiff pursuing a usury claim against a national bank might claim to stand on a state usury law, that state law of its own force cannot afford the plaintiff relief. This Court's decisions have made that clear beyond doubt. A state law governing interest rates can provide the rule of decision in a usury suit against a national bank, but only when that state-law standard properly applies to the national bank under the circumstances set forth in 12 U.S.C. § 85 (*see* pp. 5-6, *supra*). While Section 30 of the National Bank Act thus might be said to "borrow" the interest rate limits of the home states of national banks in certain circumstances (*see* States Amici Br. 15), it is nonetheless the National Bank Act, and not those incorporated state laws themselves, that governs the permissible rate of interest that may be charged by a national bank.

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In sum, Section 30 of the National Bank Act makes clear that any usury claim brought against a national bank necessarily arises under federal law, and only under federal law. Respondents have brought a usury claim against a national bank. Their claim therefore arises under federal law, and was properly removed to federal district court.

CONCLUSION

For the reasons stated above as well as those set forth in our opening brief, the judgment of the court of appeals should be reversed, and the case remanded for further proceedings in the district court.

Respectfully submitted,

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